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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,047	11/04/2003	Harumi Nishiguchi	402859/AOYAMA	3129
23548	7590	02/10/2005	EXAMINER	
LEYDIG VOIT & MAYER, LTD 700 THIRTEENTH ST. NW SUITE 300 WASHINGTON, DC 20005-3960			ROSE, KIESHA L	
			ART UNIT	PAPER NUMBER
			2822	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/700,047	<b>Applicant(s)</b> NISHIGUCHI ET AL.	
	<b>Examiner</b> Kiesha L. Rose	<b>Art Unit</b> 2822	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/03, 1/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

This Office Action is in response to the filing of the application.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-3 disclose an etching stopper layer located on **opposite said first upper cladding layer on the first side of the active layer**. It is unclear how this is formed. The lower cladding layer is on the first side of the active layer then first upper cladding layer and etching stopper layer are formed on second side of active layer, but the etching stopper layer is claiming the is opposite the first upper cladding layer on the first side of the active layer. It is unclear whether the etching stopper layer is suppose to be formed on the first side or second side of the active layer.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Murayama (U.S. Patent 6,424,668).

Murayama discloses a semiconductor laser (Fig. 1b) that contains an active layer (20), a lower cladding layer (18) located on a first side of active layer, a first upper cladding layer (22) located on a second side of active layer on the first side of active layer, an etch stopper layer (24) located opposite first upper cladding layer on first side of active layer, a second upper cladding layer (26) located opposite etching stopper layer on the first side of active layer and including a stripe protrusion in which a stripe light-guiding channel (30) is formed between the protrusion and etching stopper layer wherein the etching stopper layer is a single layer of a material different from materials of each of lower, first upper and second upper cladding layers and has a refractive index nearly equal to refractive index of each of the lower, first upper and second upper cladding layer. Where the active layer contains GaInP and each of the lower, first upper and second upper cladding layers contain AlGaInP and the Al composition ratio  $x$  is at least 0.45. (Column 2, lines 46-48)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama in view of Shima et al. (U.S. Patent 5,420,066).

Murayama discloses all the limitations except for the etching stopper layer to be formed of AlGaAs or the second upper cladding layer to be formed on AlGaAs. Whereas Shima discloses a semiconductor layer (Fig. 1) that contains a lower cladding layer (2), an active layer (3), an upper cladding layer (4), an AlGaAs etching stopper layer (5a) and a AlGaAs second upper cladding layer (6). The etching stopper layer and second upper cladding layer are formed of AlGaAs because this material is a better etch stop layers. (Column 6, lines 44-47) Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Murayama by incorporating the etching stopper layer and second upper cladding layer to comprise AlGaAs because this material is a better etch stop as taught by Shima.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kiesha L. Rose whose telephone number is 571-272-1844. The examiner can normally be reached on M-F 8:30-6:00 off 2nd Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amir Zarabian can be reached on 571-272-1852. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**AMIR ZAFARIAN**  
SENIOR PATENT EXAMINER  
TECHNOLOGY CENTER